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**1996 Wis Eth Bd 9**  
LOCAL CODE - DISQUALIFICATION

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The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not bar a local government official (1) from acting in a matter concerning another body politic with which the official is associated or (2) from acting in a matter that could affect the financial interests of an organization to whose board of directors the local governmental unit has appointed the official pursuant to statute, ordinance, or resolution to represent the interests of the local government.

A local government official may not simultaneously be an officer or director of a private organization (in a capacity other than as a representative of the local governmental unit's interests) and (a) take official action substantially affecting the organization or (b) use his or her public office to produce a substantial benefit for the organization. OEB 96-9 (July 31, 1996)

Facts

- [1] This opinion is based upon these understandings:
- a. You are the attorney for a local unit of government.
  - b. A number of state statutes and local ordinances and resolutions provide for local officials to serve on boards of directors of both government and non-government entities.
  - c. Pursuant to such statutes, ordinances, and resolutions, either the executive head of the local unit of government or its legislative body makes appointments to such boards of directors.

Questions

- [2] The Ethics Board understands your question to be:

May a member of a local unit of government's legislative body who is appointed by the local unit of government pursuant to statute, ordinance, or resolution to serve on an entity's board of directors debate and vote, in his or her official capacity, on

matters in which that entity has a substantial financial interest?

### Discussion

[3] Wisconsin's Code of Ethics for Local Government Officials and Employees applies to your question. That statute provides that no local public official (1) may use his or her public position or office to obtain financial gain, a substantial benefit, or anything of substantial value for an organization with which the official is associated, or (2) take any official action substantially affecting a matter in which an organization with which the official is associated has a substantial financial interest. §19.59(1)(a) and (c), *Wisconsin Statutes*.<sup>1</sup>

[4] Your question raises two issues: (1) whether an entity on whose board a member of a local governmental unit's legislative body serves is an "organization" as that is defined by statute, and (2) whether such local official is "associated" with an organization if the official is chosen by the local unit of government to be its representative on the organization's board of directors.

### *Organization*

[5] Section 19.42(11), *Wisconsin Statutes*, defines "organization" as

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<sup>1</sup> Section 19.59(1)(a) and (c), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates.** (1)(a) No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

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(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity *other than an individual or body politic*.

[6] A body politic includes the state or a local government, or part thereof. Boards and commissions that are created by, and are a part of the state or a local government, are bodies politic and not “organizations” within the meaning of the Ethics Code.<sup>2</sup> Thus, for example, boards and committees authorized by state statutes, all part of local government, and exercising government functions, are not “organizations” as defined by §19.42. As a result, §19.59 does not bar an official from participating in official decisions that may financially affect such entities.<sup>3</sup>

#### *Associated*

[7] Some of the entities about which you have asked are private, not for profit corporations, that are not bodies politics and, hence, are “organizations” within the meaning of the statute. The question then becomes whether a member of a local governmental unit’s legislative body serving on such organization’s board of directors is “associated” with that organization under the circumstances you have described.

[8] Section 19.42(2), *Wisconsin Statutes*, provides:

“Associated”, when used with reference to an organization, includes any organization in which an individual . . . is a director, officer or trustee . . . or of which an individual . . . is an authorized representative or agent.

[9] The issue in the instant circumstances is whether the local official is the director of the organization, or whether the local unit of government, acting through its agent, is the director. In our view, a local official appointed pursuant to state statute, or local ordinance or resolution, to represent the local unit of government and its interests on a board of directors of an organization, does not thereby become associated with that organization. A local elected official appointed in this circumstance serves in a representational, and not an individual, capacity. It appears to be the local unit of government that has a seat on the board of directors by virtue of the

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<sup>2</sup> See *Watkins v. Milwaukee County Civil Service Commission*, 88 Wis. 2d 411 (1979) (the Milwaukee County Civil Service Commission is a body politic because it consists of appointed members who perform statutorily defined governmental functions).

<sup>3</sup> Although the restrictions of §19.59 do not apply, it should be noted that every public officer has a duty of undivided loyalty to the governmental body he or she represents. 1992 Wis Eth Bd 32; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322. There may also be compatibility of office issues that arise from a local government official holding other governmental positions.

governing law; not the individual filling that seat. Indeed, it is our understanding that a local governmental unit would appoint an individual to an organization's board of directors to protect its interests, and not simply to serve the organization.

[10] A local elected official owes a duty of undivided loyalty to the public whom the official serves while participating in decisions in an official capacity. The thrust of the Ethics Code is to help resolve conflicts between a government official's public responsibilities and the official's private interests in favor of fulfilling one's responsibilities to the public. In the circumstances about which you have asked, the official's interests are identical to promoting the public's interest, and there is no conflict.

[11] For these reasons, §19.59 does not bar a local elected official's simultaneously acting in an official capacity on decisions affecting an organization on whose board the official sits as a representative of the local unit of government.

[12] We note that section 19.59(1m), *Wisconsin Statutes*, authorizes a local unit of government to adopt its own standards of conduct for officials pursuant to ordinance. We take no position and offer no opinion about how or whether a local government's own ordinance addresses these issues.

#### Advice

[13] The Ethics Board advises that §19.59, *Wisconsin Statutes*, does not bar a local government official (1) from acting in a matter concerning another body politic with which the official is associated or (2) from acting in a matter that could affect the financial interests of an organization to whose board of directors the local governmental unit has appointed the official pursuant to statute, ordinance, or resolution to represent the interests of the local government.

[14] A local government official may not simultaneously be an officer or director of a private organization (in a capacity other than as a representative of the local governmental unit's interests) and (a) take official action substantially affecting the organization or (b) use his or her public office to produce a substantial benefit for the organization.